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Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Frank X. Kartch - Reduction in Force - Retained Grade and Pay

**File:** B-235468

**Date:** September 25, 1990

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### DIGEST

1. A grade GS-9 employee was given a specific reduction-in-force (RIF) notice providing for his separation effective September 18, 1981. On September 17, 1981, the agency offered him a grade GS-5 position, which he accepted, but advised him that salary could not be set higher than grade GS-5, step-10, because it was outside his competitive area set under RIF procedures. The agency committed an unjustified and unwarranted personnel action when it erroneously denied him grade and pay retention on the basis that the employee did not receive a demotion pursuant to a RIF but was reassigned to a lower-graded position. The employee met the requirements for retained grade and pay since the employee had received a specific RIF notice and the grade GS-5 position was offered at the initiative of management.

2. A grade GS-7 employee was given a general reduction-in-force (RIF) notice informing him that the installation where he was then currently employed was targeted for closure. Subsequently he was reassigned to a position at the same grade and step. Since this reassignment neither was pursuant to a specific RIF notice nor resulted in a demotion, it does not appear to have resulted in any adverse consequences which would be subject to remedial action. Further, employee was subsequently laterally reassigned to a different position at the same grade and step. However, employee notes that new position was reclassified from GS-9 to GS-7 concurrent with his reassignment to it and questions this action. The Office of Personnel Management is required to review and correct agency classification and its corrective action is binding. See 5 U.S.C. § 5110, 5112. Hence, we are without jurisdiction to issue any ruling or decision concerning the classification of positions.

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## DECISION

Mr. Frank X. Kartch, a former employee of the Fish and Wildlife Service (Service), Department of the Interior, requests a decision on his entitlement to retained grade and retained pay. For the reasons that follow, we find that the Service's denial of grade and pay retention to Mr. Kartch incident to his reassignment in September 1981 constitutes an unjustified or unwarranted personnel action which entitles him to relief under the Back Pay Act, 5 U.S.C. § 5596 (1988). However, we find no basis to grant him similar relief for two later reassignments.

Mr. Kartch was employed by the Service as a Realty Specialist, grade GS-9, step 3, in Aberdeen, South Dakota, when he received a specific notice in July 1981 of a pending reduction in force (RIF). The RIF notice informed Mr. Kartch that his position would be abolished effective September 18, 1981, because of a shortage of funding, and, because there were no positions in the legally defined competitive area, he would be separated effective September 18, 1981. However, on September 17, 1981, a vacant grade GS-5 Fishery Biologist position in Spearfish, South Dakota was identified by the agency as a position for which Mr. Kartch qualified. Mr. Kartch was offered this position with the caveat that his salary could not be set higher than grade GS-5, step 10. On the day that the offer was made to him, Mr. Kartch communicated his acceptance in writing, acknowledging that the position may be at the entry level grade GS-5, step 10.

The Service determined that Mr. Kartch did not qualify for grade or pay retention because his placement in the GS-5 position was not the result of RIF procedures.

An employee who is placed in a lower grade as a result of RIF procedures is entitled to grade and pay retention under the provisions of 5 U.S.C. §§ 5362, 5363 (1988). The Fish and Wildlife Service determined that Mr. Kartch was not eligible for grade and pay retention because his placement in the grade GS-5 position was outside his competitive geographic area set under the RIF regulations, and therefore was processed as a change to lower grade under internal placement procedures found in 5 C.F.R. Part 335 (1981). The agency explains that this decision was based on the RIF regulations found in part at 5 C.F.R. §§ 351.701-705 ("Assignment Rights"). Although no specific provision is referenced, the agency states that: "According to 5 C.F.R. 351.701-705, 'placement in a position through reduction-in-force' requires exercise of assignment rights to bump or retreat into a position occupied by an employee with lower retention standing or an equivalent

position. This was not the means by which Mr. Kartch was placed into the grade GS-5 Fishery Biologist position."

We believe that the Service erred in its interpretation and application of these provisions.

Section 5362 of title 5, United States Code (1988), governs entitlement to grade retention and provides in pertinent part:

"(a) Any employee--

"(1) who is placed as a result of reduction-in-force procedures . . . to another position . . . which is in a lower grade than the previous position, and

"(2) who has served for 52 consecutive weeks or more in one or more positions . . . at a grade or grades higher than that of the new position, is entitled . . . to have the grade of the position held immediately before such placement considered to be the retained grade of the employee in any position he holds for the 2-year period beginning on the date of such placement."

Mr. Kartch was placed in a lower-graded position and had served for more than 52 consecutive weeks in a position at a higher grade than that of the new position. Hence, the issue for our decision is whether or not he was placed in the lower-graded position as a result of RIF procedures.

Guidance applicable to this case is found in the Federal Personnel Manual Supplement 990-2, Book 536, Subchapter S3, paragraph S3-1a(1) (June 10, 1981) which provides in pertinent part as follows:

"An employee is also considered to have been placed as a result of reduction-in-force procedures if he or she is placed in a position other than that offered in the specific reduction-in-force notice, provided two conditions are met. The first condition is that the position to which the employee is downgraded was offered at the initiative of management. The offer must be in writing, and it may be at any grade level. The second condition is that reduction-in-force procedures must have been followed to the extent that the employee, whose entitlement to grade retention is being determined, has received a specific reduction-in-force notice." (Emphasis in original.)

Mr. Kartch's downgrade meets both of these conditions, as the grade GS-5 position was brought to Mr. Kartch's attention by the Service and discussed with him at the agency's initiative after Mr. Kartch had received a specific RIF notice as defined in the Federal Personnel Manual, chapter 351, para. 6-2 (July 7, 1981).1/ The offer of the grade GS-5 position was apparently not made in writing. However, the purpose of OPM's guidance that the offer be in writing is to aid in making a determination after the fact as to whether the position offered was at the initiative of management. Since Mr. Kartch accepted this position in writing on the same day upon which it was offered and the agency does not dispute the specifics of the offer and since the record is conclusive that it was made at the agency's initiative, Mr. Kartch's written acceptance serves the purpose of the requirement that the record be documented.2/

Also, we disagree with the agency's determination that since the position offered to Mr. Kartch was not in his legally defined competitive area his reassignment to that position was not pursuant to RIF procedures. We are not aware of any regulation which supports such an interpretation, and there is nothing in the language of paragraph S3-1a(1), supra to so restrict its application. That is, the fact that an employee has specific reassignment or bumping rights within his competitive area under a RIF situation does not preclude his entitlement to grade and pay retention when he is placed in a position outside his competitive area under the conditions outlined in paragraph S3-1a, supra.3/

Under section 5363(a)(1) and (b) of title 5 an employee who ceases to be entitled to grade retention under 5 U.S.C. § 5362 by reason of the expiration of the 2-year period becomes entitled to a period of pay retention. This statute

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1/ A specific RIF notice, among other things, appraises the employee of the particular personnel action to be taken against him, and its effective date, in contrast to a general notice which merely informs the employee that a RIF action may be necessary but a specific action has not yet been determined. See 5 C.F.R. §§ 351.802 and 351.803; and Carmen G. Benabe and Howell E. Bell, 66 Comp. Gen. 609 at 611 (1987).

2/ We informally contacted OPM regarding this point, and it concurred in this view. Further, OPM advises that its guidance that the offer be in writing was never intended to be used as a bar to grade retention when the record is otherwise clear that the offer was at management's initiative.

3/ OPM also informally concurred in this view.

provides a specific formula for computing an employee's retained pay. Accordingly, Mr. Kartch is entitled to pay at his retained grade for the initial 2-year period of his downgraded employment beginning September 20, 1981, and to retained pay after this period computed under the provisions of 5 U.S.C. § 5363.

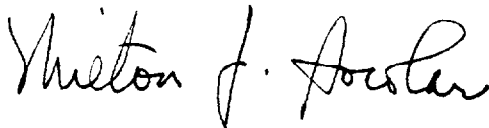
Therefore, the Department of the Interior committed an unjustified or unwarranted personnel action when it erroneously denied Mr. Kartch his retained grade and retained pay, as authorized by pertinent statutes and regulations. Accordingly, Mr. Kartch is entitled to backpay as specified in this decision under the provisions of the Back Pay Act, 5 U.S.C. § 5596 (1988).

Mr. Kartch has also requested our review of a reassignment he received effective March 20, 1983, following the receipt of a general RIF notice dated January 11, 1982, informing him that the Spearfish Fisheries Center, where he had been most recently employed as an Outdoor Recreation Planner, grade GS-7, step-10, had been targeted for closure. The reassignment was to a position of Wildlife Biologist, grade GS-7, step-10, at the Des Lacs Refuge Complex, Kenmore, North Dakota. Since this reassignment neither was pursuant to a specific RIF notice nor resulted in a demotion, it does not appear to have resulted in any adverse consequences which would be subject to remedial action.

Additionally, Mr. Kartch points out that he was laterally reassigned effective February 5, 1984, from his Wildlife Biologist grade GS-7, step 10, position at Des Lacs to a Refuge Manager position at the same grade and step. However, Mr. Kartch notes that the full performance level of this position had apparently been at the grade GS-9 level at the time of his reassignment but concurrently reclassified down to a grade GS-7 level with his reassignment to that position. Mr. Kartch asks our review of this action. The record discloses that Mr. Kartch did receive a promotion to grade GS-9, step 5, effective December 9, 1984, while serving in the Refuge Manager position as a result of additional duties and responsibilities.

We note that under 5 U.S.C. § 5107, individual agencies have authority to place positions in appropriate classes and grades in conformance with standards published by OPM. See 5 C.F.R. part 511 (1989). As a result, because statutory authority to establish appropriate classification standards and to allocate positions subject to the General Schedule rests with the agency concerned and the OPM, the General Accounting Office has no authority to settle claims on any basis other than the agency or OPM classification. The Office of Personnel Management is required to review agency

classification actions and correct those which are not in accordance with published standards, and its correction certifications are "binding on all administrative, certifying, payroll, disbursing, and accounting officials." 5 U.S.C. §§ 5110, 5112. Hence, we are without jurisdiction to issue any ruling or decision concerning the classification of positions. Paul W. Braun, B-199730, Jan. 18, 1983. Further, the United States Supreme Court has ruled that federal employees may not maintain claims for backpay on the basis of assertions that they were misclassified and improperly deprived of equal pay for equal work. United States v. Testan, 424 U.S. 392, 399-400 (1976).



**Acting** Comptroller General  
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